REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**C.T.A. CRIM. CASE NO. O-017** **For: VIOLATION OF SECTION 56(B) AND SECTION 106(A) IN RELATION TO SECTION 255 OF THE NATIONAL INTERNAL REVENUE CODE**
- versus -	Members: **CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
MARISOL SANDOVAL & IRENE BASAN,, Accused.	**Promulgated:** DEC 13 2007 2:00 p.m.

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RESOLUTION

This resolves the following:

1.) accused Irene Basan's **"Demurrer to Evidence (Ad Cautelam)"** filed on May 29, 2007;

2.) accused Marisol Sandoval's **"Demurrer to Evidence"** filed on July 2, 2007; and

3.) prosecution's **"Comments/Oppositions"** filed thereto on August 29, 2007 and July 19, 2007, respectively.

Accused Marisol Sandoval and Irene Basan are charged before this Court with Violation of Section 56(B) and Section 106(A), in relation to Section

255 of the National Internal Revenue Code (NIRC) of 1997 under an Information which read as follows:

> "The undersigned Assistant City Prosecutor of the Department of Justice, hereby accuses MARISOL SANDOVAL and IRENE BASAN, in their capacity as Managing Officer and General Manager respectively, both responsible officers of Marksman Sports House, Incorporated, with business address at Magsaysay Ave., Davao City of the crime of Violation of Section 56(B) and Section 106 (A) in relation to Section 255 of the National Internal Revenue Code, committed as follows:
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> That on or about March 13, 2002, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court of Tax Appeals, the above named accused did then and there willfully, unlawfully and feloniously fail and refuse to pay the total amount of TWENTY MILLION FIVE HUNDRED NINETY FIVE THOUSAND NINE HUNDRED THIRTY PESOS AND FIFTY CENTAVOS (P20,595,930.510), inclusive of increments, as deficiency corporate income (P8,016,801.82) and value-added tax (P12,579,128.68) for the taxable year 2000, despite demand made to pay the same, to the damage and prejudice of the Philippine Government in the amount aforesaid.
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> CONTRARY TO LAW.[1]"

Records show that on March 20, 2006, accused Irene Basan, filed a "Manifestation With Very Urgent Motion for Reinvestigation"[2] (alleging lack of full-blown preliminary investigation of this case against her), with Comment

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[1] Information filed on December 22, 2005, Docket, p. 3.
[2] Docket, pp. 165-168.

filed by the prosecution on March 30, 2006,[3] and correspondingly denied by this Court in the Resolution dated April 12, 2006.[4]

Upon arraignment of accused Marisol Sandoval (on March 22, 2006)[5] and Irene Basan (on April 17, 2006),[6] both accused separately pleaded "Not Guilty" to the charge, duly assisted by their respective defense counsel de parte. A preliminary Conference meeting was held on May 3, 2006[7] followed by Pre-Trial held on May 17, 2006 [8] wherein the parties agreed to a lone issue for the resolution of this Court, to wit:

> "Whether or not accused Marisol Sandoval and Irene Basan can be held liable for the offense charged in the information"[9]

During trial, the prosecution presented the following witnesses: Mario Ramil T. Beltran, Albert S. Velasco, Anecito T. Dagdag, Jr., Gerardo C. Utanes, and Ferdinand Ronnie Rayos. Thereafter, the prosecution formally offered its evidence on February 27, 2007[10]. Accused Marisol Sandoval filed her Comment and Opposition thereto on March 12, 2007[11] while accused Irene Basan, with leave of Court, belatedly filed Comment With Opposition May 9, 2007[12]. In the Resolution dated June 12, 2007[13], the Court admitted the prosecution's documentary exhibits and considered it to have rested its case. In the same resolution, the Court granted accused Marisol Sandoval's

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[3] Docket, pp. 260-262.
[4] Docket, pp. 267-271.
[5] Certificate of Arraignment, Docket p. 274.
[6] Certificate of Arraignment, Docket, p. 276.
[7] Minutes of Preliminary Conference, Docket, pp. 369-373.
[8] Minutes of Pre-trial, Docket, p. 457.
[9] Pre-Trial Order, pp. 461-474, at p. 463.
[10] Docket, pp. 997-1007.
[11] Docket, pp. 1046-1047.
[12] Docket, pp. 1063-1078.
[13] Docket, pp. 1116-1117.

Motion for Leave to File Demurrer to Evidence as well as accused Irene Basan's Motion to Admit Attached Demurrer to Evidence (Ad Cautelam) and correspondingly admitted said Demurrer to Evidence[14]. Subsequently, accused Sandoval filed her Demurrer To Evidence on July 2, 2007[15]. The prosecution filed two separate Comments and Oppositions to accused Irene Basan's Demurrer to Evidence on July 19, 2007,[16] and to that of accused Marisol Sandoval, on August 29, 2007.[17]

Hence, this Resolution.

In determining whether or not a prima facie case has been proven by the prosecution, We look at the evidence adduced against herein accused.

Records show that in a Letter dated July 12, 2004 addressed to the City Prosecutor of Davao City, then Commissioner of Internal Revenue, Guillermo L. Parayno, Jr., recommended the criminal prosecution of herein accused, Marisol Sandoval and Irene F. Basan, in their capacities as Managing Officer and General Manager, respectively, of Marksman Sports House Incorporated, for the alleged failure of said corporation to pay deficiency corporate income tax and value added tax for taxable year 2000 in the total amount of P20,595,930.51 under an unnumbered Assessment Notice/Demand Letter dated March 13, 2002, in violation of Section 56 (B) and Section 106 (A) of the NIRC of 1997.[18] Allegedly, the said Notice of Assessment and Demand Letter dated March 13, 2002 were issued and sent to the taxpayer by registered mail; that despite repeated demands made upon

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[14] Docket, pp. 1080-1113.
[15] Docket, pp. 1124-1130.
[16] Docket, pp. 1135-1142.
[17] Docket, pp. 1163-1171.
[18] Letter dated July 12, 2004, Docket, pp. 56-57.

the afore-named responsible officers, they allegedly failed and refused and still fail and refuse to pay the said deficiency tax liabilities. Thus, said assessment notice allegedly became final, executory and demandable.

To prove the fact of mailing of the original copy of the Final Demand Letter and Assessment Notices for Deficiency VAT and Income Taxes dated March 13, 2002 to Marksman Sports House, Inc. at its address on record at Door A-4 Plaza de Luisa Complex, Ramon Magsaysay Avenue, Davao City, the prosecution presented Mario Ramil T. Beltran, a messenger of the Bureau of Internal Revenue (BIR) assigned at the Administrative Division, Revenue Region No. 19, with office at San Pedro St., Davao City, and in charge of mailing of letters, communication of said office. He testified as to the mailing of the Assessment Notices[19] and Formal Demand Letter[20] by registered mail, and identified Registry Receipt No. 1760-02[21] issued for said mail matters, and the entries made in the logbook to record the alleged mailing of said documents.

To show the manner by which the Final Demand Letter and Assessment Notices all dated March 13, 2002 were received and recorded in their office, the prosecution presented Alberto S. Velasco, occupying the position of Accounting Clerk III, allegedly performing the functions of incoming and outgoing clerk of the Records Section at Administrative Division of Region 19, Davao City (from February 29, 2000 to June 18, 2000). He testified that he received from the Assessment Division of their region, the

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[19] Exhibits "A-1" and "A-2", TSN, June 26, 2006 hearing, Docket, p. 490.
[20] Exhibit "A".
[21] Exhibit "B-1", TSN, June 26, 2006 hearing, Docket, pp. 497, 517, 1012.

original copies of the Final Demand Letter and Assessment Notices all dated March 13, 2002 addressed to Marksman Sports House, Inc. with address at Door 4 Plaza De Luisa Complex, Ramon Magsaysay Avenue, Davao City. Said witness testified as to the manner of receiving and recording of mail matters at their office, and identified the entries (which were allegedly entered by trainees in their office) in the logbook regarding subject mail matters, as well as the transmittal slip covering the same.

To establish that both the accused willfully failed to pay the subject tax deficiencies, the prosecution presented Aniceto T. Dagdag, Jr., a Revenue Enforcement Officer 2 of the Collection Enforcement Division of the Bureau of Internal Revenue. He narrated and testified that he received a Memorandum of Assignment[22] to conduct tax investigation/verification on the VAT and Income tax deficiencies of Marksman Sports House, Inc. and to determine whether the subject assessment is already due and demandable; that he prepared a Preliminary Collection Letter dated June 2, 2003, [23] and subsequently issued the Final Notice before Seizure (Second and Final Collection Letter dated June 11, 2003) [24], which he allegedly served personally upon the subject corporation at its Cubao office; and that he was able to talk to Mr. Sulito P. Sandoval, the President/Owner of Marksman Sports House, Inc., who promised to send a tax counselor or lawyer to the Bureau. Since nobody went to see him, he issued various Warrants of

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[22] Exhibit "T", TSN, August 23, 2006 hearing, Docket, pp. 750-754.
[23] Exhibit "U", TSN, August 23, 2006 hearing, Docket, pp. 755-758.
[24] Exhibit "V", TSN, August 23, 2006 hearing, Docket, pp. 759-761, 763.

Garnishment[25] and a Warrant of Distraint and Levy[26] against the bank deposits and properties, respectively, of Marksman Sports House, Inc., pursuant to the civil remedies provided under Section 205 of the NIRC of 1997. However, said remedies failed to satisfy the subject delinquent taxes, and as a result, he endorsed the case to the legal division of the BIR. Consequently, he received a Memorandum dated March 23, 2006[27] issued by Assistant Commissioner James Roldan of the Bureau's Legal Service, ordering him to forward the docket of the subject case before the Collection Enforcement Division for appropriate legal action. Thus, he issued a corresponding Endorsement[28] forwarding said docket thereto.

In addition, he also explained that although in his Affidavit dated July 9, 2004,[29] it was stated that the address of Marksman Sports House, Inc. is in Davao City, he, however, served the aforementioned documents in Cubao, as this is a branch office of the subject corporation; he emphasized that he served the Warrant of Distraint and Levy to Marisol Sandoval, allegedly the managing officer of Marksman Sports House, Inc.

With respect to the alleged verification made as to the existence of the subject delinquent internal revenue taxes and as to the identity of the responsible officers of Marksman Sports House, Inc., the prosecution presented two witnesses: Gerardo C. Utanes, Revenue Officer III, of the National Investigation Division of the BIR, who identified the Memorandum

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[25] Exhibits "H, I and J", TSN, August 23, 2006 hearing, Docket, pp. 765-769.
[26] Exhibit "C", TSN, August 23, 2006 hearing, Docket, pp. 763, 765-766.
[27] Exhibit "W", TSN, August 23, 2006 hearing, Docket, pp. 772-773.
[28] Exhibit "X", TSN, August 23, 2006 hearing, Docket, pp. 774-775.
[29] Exhibit "F", TSN, August 23, 2006 hearing, Docket, pp. 781-786.

Report dated June 10, 2004[30] he issued, containing the finding that accused Irene Basan and Marisol Sandoval are allegedly the stockholder/director and the managing officer of Arms Corporation, respectively; and Ferdinand Ronnie Rayos, Intelligence Officer of the National Investigation Division of the BIR, who identified various documents, including the final draft of the letter complaint addressed to the City Prosecutor of Davao City signed by then Commissioner of Internal Revenue, Guillermo N. Parayno, Jr.,[31] among others.

We now resolve whether or not, based on the evidence presented by the prosecution, both accused have been proven guilty beyond reasonable doubt for the offense charged in this case.

The specified sections of the NIRC of 1997 allegedly violated by both the accused read:

> "**Sec. 56. Payment and Assessment of Income tax for Individuals and Corporations. –**
>
> xxx xxx xxx.
>
> **(B) Assessment and Payment of Deficiency Tax**.- After the return is filed, the Commissioner shall examine it and assess the correct amount of the tax. The tax or deficiency income tax so discovered shall be paid upon notice and demand from the Commissioner.
>
> xxx xxx xxx."
>
> "**Sec. 106. Value-added Tax on Sale of Goods or Properties**.-
>
> (A) **Rate and Base of Tax**.- There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax

[30] Exhibit "G", TSN, September 4, 2006 hearing, Docket, pp. 832-833.
[31] TSN, November 6, 2006 hearing, Docket, pp. 898-972.

equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.

xxx xxx xxx."

"**Sec. 255. Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation**. – *Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations* shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

xxx xxx xxx."
(Underscoring and italics supplied)

However, it appearing that the taxpayer is a corporation, We must also take into consideration the provisions of Sections 253(d) and 256 of the NIRC of 1997, which state that:

"**Sec. 253. General Provisions**.-

xxx xxx xxx.

(d) In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and employees responsible for the violation.

xxx xxx xxx."

"**SEC. 256. Penal Liability of Corporations.**- Any corporation, association or general co-partnership liable for any of the acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the responsible corporate officers, partners, or employees, shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than Once hundred thousand pesos (P100,000)."

Based on the above-quoted provisions, the prosecution must prove the elements of the crime: *first*, that the accused is required under the NIRC of 1997 to pay any tax, make a return, keep any record, or supply correct and accurate information; *second*, that the accused willfully fails to pay the tax due; and *third,* that the accused are responsible officers.

In her Demurrer to Evidence, accused Irene Basan submits that the prosecution failed to demonstrate beyond reasonable doubt that: (1) she is a person required under the NIRC of 1997 or by the rules and regulations to pay any tax, make a return, keep any record, or supply correct and accurate information; (2) she duly received the notice of demand to pay deficiency value added tax; and (3) she willfully failed to pay deficiency taxes.[32]

Likewise, in her Demurrer to Evidence, accused Marisol Sandoval submits that the prosecution failed to prove her guilt beyond reasonable doubt. On the contrary, the evidence of the prosecution shows that she is not a responsible officer of Marksman Sports House, Inc.[33]

We agree with accused Irene Basan and Marisol Sandoval.

In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt by the prosecution.[34] Proof beyond reasonable "does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that

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[32] Docket, pp. 1085-1086.
[33] *Ibid.*, pp. 1124- 1130.
[34] Section 2, Rule 133 of the Revised Rules of Court. See also *People v. Quilaton, et al.*, 324 SCRA 670.

degree of proof which produces conviction in an unprejudiced mind."[35] As held by the Supreme Court in *People v. Galvez*, G.R. No. 157221, March 30, 2007 (519 SCRA 521): "In our criminal justice system, the overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains reasonable doubt as to his guilt."

On the other hand, the court may dismiss an action of the ground of insufficiency of evidence (1) on its own initiative, or (2) upon demurrer to evidence filed by the accused with or without leave of court.[36]

In this case, the Court finds that the prosecution failed to discharge the burden of proving the guilt of the accused Marisol Sandoval and Irene Basan beyond reasonable doubt.

First and Second Elements: The Accused is Required Under the Law to Pay Tax and They Willfully Failed To Pay The Tax Due

The prosecution claims that as early as March 13, 2002, the Final Demand Letter and Assessment Notice for deficiency income and value-added taxes were sent to the corporate taxpayer, which were protested and subsequently denied in a Decision dated September 17, 2002. As the corporate taxpayer interposed no appeal within the prescribed period, the decision became final, executory and demandable. Despite the final and executory decision and the collection letters of the BIR, the corporate taxpayer willfully refused to pay the tax due.

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[35] Section 2, Rule 133, Revised Rules of Court.
[36] Section 23, Rule 119 of the Revised Rules of Court.

The records of the case are bereft of evidence to show the tax liability of the corporate taxpayer. In fact, in the Pre-trial Order dated June 21, 2006, the parties did not admit that there was a Decision at the administrative level establishing the tax liability of the corporate taxpayer; neither did the prosecution present as evidence, during trial, the alleged Decision dated September 17, 2002, which allegedly became final and executory.

This Court further notes that the prosecution presented as evidence BIR Form No. 0607 (or Voluntary Assessment Program Payment Form) for value-added tax for the fiscal year ending in March 2000;[37] BIR Form No. 2106-VT (or VAP Availment Form Value-Added Tax);[38] BIR Form No. 0607 (or Voluntary Assessment Program Payment Form) for income tax for the fiscal year ending in March 2000;[39] and BIR Form No. 2106-IT (or VAP Availment Form Income Tax) duly accomplished and filed by the corporate taxpayer.[40] Such documentary evidence showing payment of deficiency taxes by herein corporate taxpayer (Marksman Sports House, Incorporated) belies the prosecution's contention that the latter, or its responsible officers, willfully fails and refuses to pay the taxes due.

Third Element: The accused are responsible officers.

Although the prosecution claims that accused Irene Basan and Marisol Sandoval are the responsible officers of Marksman Sports House, Incorporated, as they are the General Manager and Managing Officer of said

[37] Exhibit "L."
[38] Exhibit "M."
[39] Exhibit "N."
[40] Exhibit "O."

corporation, respectively, it however failed to prove this matter with moral certainty.

Admittedly by the prosecution, accused Irene Basan became a General Manager only on May 2000 at the Davao City branch of Marksman Sports House, Incorporated.[41] Therefore, she became only an officer of said corporation after the commission of the alleged violation of the subject provisions of the NIRC.

During the cross-examination of the prosecution's witness, Mr. Gerardo T. Ortanez, testified thus:[42]

> "ATTY. TORREON:
> Q. Mr. Ortanez, I was made to understand on your testimony that your only role is <u>the verification of the officers of Marksman for the year 2004</u>.
>
> MR. ORTANEZ:
> A. <u>Yes, Sir.</u>
>
> ATTY.TORREON:
> Q. You have no participation whatsoever on other matters concerning the investigation?
>
> MR. ORTANEZ:
> A. Yes, Sir.
>
> ATTY. TORREON:
> Q. <u>You did not verify as to who were the officers of Marksman in the year 1999 to 2000?</u>
>
> MR. ORTANEZ
> A. <u>Yes, Sir.</u>
>
> ATTY. TORREON:
> Q. You said that you attempted to secure a certification on the Securities and Exchange Commission but you were not given such a certification?

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[41] Docket, p. 462.
[42] TSN, September 4, 2006, Docket pp. 857-861.

MR. ORTANEZ
A. Yes, Sir.

ATTY. TORREON
Q. I would be correct if I state that you request a certification from the SEC that is usually a letter request, correct?

MR. ORTANEZ
A. Sir, ... (interrupted)

ATTY TORREON
Q. Just yes or no.

MR. ORTANEZ
A. Yes, Sir.

ATTY. TORREON
Q. But in this case, you did not present to us any letter request?

MR. ORTANEZ
A. Yes, Sir.

ATTY. TORREON
Q. So, you are therefore telling us that your basis as to who were the officers of Marksman is only supplied to you by this Informer whom you cannot anymore identify?

MR. ORTANEZ
A. Yes, Sir.

ATTY.TORREON
Q. You have no records from the Securities and Exchange Commission showing clearly as to who in fact were the officers of Marksman from the year 1999 to 2000?

MR. ORTANEZ
A. Yes, Sir.

ATTY. TORREON
Q. The name Irene Basan was only given to you by the Informer?

MR. ORTANEZ
A. Yes, Sir.

ATTY. TORREON
Q. You also testified that you did not have the chance to talk to this Irene Basan?

MR. ORTANEZ
A. Yes, Sir.

ATTY. TORREON
Q. You did not know that Irene Basan was only the wife of Bienvenido Basan? You did not know that?

MR. ORTANEZ
A. I have no idea, Sir.

ATTY.TORREON
Q. So you recommended the filing of a case against Irene Basan even made her number 1 in your Memorandum based only on the information given to you by this informant whom you cannot identify today?

MR. ORTANEZ
A. Yes, Sir." *(Underscoring supplied)*

Similarly, another witness, Mr. Aniceto T. Dagdag, Jr., while being cross-examined by defense counsel, Atty. Torreon, manifested that Irene Basan did not appear in the SEC records as an officer of the corporate taxpayer. We quote:[43]

"ATTY. TORREON
Q. You are of course aware that in the SEC records, the name of Irene Basan does not appear in any way?

MR. DAGDAG
A. Yes, your Honor." *(Underscoring supplied)*

In the case of accused Marisol Sandoval, her only link to Marksman Sports House, Incorporated is that she is the daughter of Mr. Solito P.

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[43] TSN, August 23, 2006, Docket, p. 794.

Sandoval, the president/owner of Marksman Sports House, Inc. The prosecution's witness, Aniceto T. Dagdag, Jr., testified and said:[44]

> "ATTY. URBANO:
> Q. What was your basis in your Affidavit that Marisol Sandoval is the Managing Officer of Marksman Sports House, Inc.?
>
> MR. DAGDAG:
> A. Actually, I assumed her as the Managing Officer because she is the daughter of Solito Sandoval. That is only my basis." *(Underscoring supplied)*
>
> Moreover, he also testified:
>
> "ATTY. URBANO:
> Q. Who among the officers or responsible officers of Marksman did you talk to or demand the payment?
>
> MR. DAGDAG:
> A. Actually, I was able to talk to Mr. Sandoval at this time, Solito Sandoval.
>
> ATTY.URBANO:
> Q. Who is this Mr. Sandoval in relation to Marksman Sports House, Inc.?
>
> MR. DAGDAG:
> A. It's (sic) the President of Marksman Sports House, Inc." *(Underscoring supplied)*

For all the foregoing, it is clear that the prosecution's documentary and testimonial evidence are insufficient to show that both the accused are responsible officers of the corporate taxpayer during the taxable year 2000. This being so, they cannot be held criminally liable for willful intent to evade the payment of taxes. Consequently, both accused cannot be held civilly liable to pay the alleged deficiency taxes herein.

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[44] TSN, August 23, 2006, Docket, p. 786.

In view thereof, a determination as to whether or not the subject assessment notice was sent to the right address becomes unnecessary, more so, that Marksman Sports House, Incorporated, the supposed corporate taxpayer in this case, has not been impleaded herein together with its alleged responsible officers. Thus, We cannot make a finding as to the civil liability to pay deficiency corporate income tax and value added tax for the taxable year 2000 of the supposed corporate taxpayer herein.

WHEREFORE, premises considered, both Demurrers to Evidence filed by accused Irene Basan and Marisol Sandoval are hereby **GRANTED** and the above-captioned case against them is hereby **DISMISSED** for insufficiency of evidence.

Accordingly, both accused Irene Basan and Marisol Sandoval are hereby **ACQUITTED**.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice